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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
MISSOULA DIVISION

MISSOULA COUNTY, a political)	CAUSE NO.:
subdivision of the State of Montana,)	
)	COMPLAINT FOR BREACH
Plaintiff,)	OF CONTRACT
)	
v.)	
)	
STATES SELF-INSURERS RISK)	
RETENTION GROUP, INC.,)	
)	
Defendant.)	

COMES NOW Plaintiff Missoula County, by and through its counsel, and alleges as follows:

1. Plaintiff Missoula County is a political subdivision created and existing under the laws of Montana with its principle place of business in Missoula, Missoula County, Montana.

2. Defendant States Self-Insurers Risk Retention Group, Inc. is a foreign corporation incorporated in the State of Vermont and its principle place of business is

in Burlington, Vermont. Defendant is an out-of-state chartered risk retention group but is nevertheless subject to the laws of Montana including the duties and obligations imposed upon insurers which sell insurance contracts in Montana.

3. The amount in controversy, exclusive of costs, interest and attorney fees, is in excess of \$75,000.

4. Jurisdiction in this Court is proper according to 28 U.S.C. § 1332 as there is complete diversity between the parties and the amount in controversy exceeds the sum of \$75,000.

5. Missoula County has been an insured or reinsured of Defendant States Self-Insurers Risk Retention Group, Inc. continuously from at least July 1, 1999 through July 1, 2020. Missoula County timely paid all premiums and complied with its obligations under the policies which were in full force and effect throughout the relevant time period.

6. As a reinsurer, Defendant States Self-Insurers Risk Retention Group, Inc. owed duties and obligations to Missoula County under the terms of its policy of reinsurance, exemplars of which for the period July 1, 1999 to July 1, 2000 and for the period July 1, 2013 through July 1, 2014, true and correct copies of which are attached hereto as **Exhibits A** and **B** and incorporated by this reference.

7. Claims and suits were brought against Missoula County in 2013 alleging

errors and omissions with respect to statutory and legal obligations concerning subdivisions. On December 30, 2013 suit was filed by *Johnston, et. al.* as Cause No. DV-13-1421 in Missoula Fourth Judicial District Court, Missoula County, Montana against Missoula County and the Missoula County Commissioners, a true and correct copy is attached as **Exhibit C** and incorporated by this reference. On the 26th day of April, 2013 suit was brought as Cause No. DV-13-492 entitled *Mark Denton, Plaintiff v. Missoula County and The Missoula County Commissioners*, a true and correct copy of which is attached as **Exhibit D** and incorporated by this reference. Both suits alleged errors and omissions with respect to alleged failures to comply with statutory and legal obligations concerning subdivisions.

8. The *Denton and Johnston* suits were tendered to Defendant States. Defendant States breached its contract with Missoula County, and its duties under the law of Montana which are implied obligation in all insurance contracts, by failing to respond or acknowledge coverage for a considerable period of time. Defendant States also breached its contract with Missoula County and its obligations under Montana law implied in all insurance contracts including the mixed action rule by erroneously denying coverage and by erroneously denying policy benefits on the basis that the suits alleged only claims of breach of contract against Missoula County. The law of Montana follows the “mixed action rule” which obligates all insurers to defend suits

alleging mixed causes of action.

9. The claims in each suit actually alleged violations of statutory obligations and non-contractual legal obligations against Missoula County which were covered under the policies sold by Defendant States to Missoula County.

10. Defendant States failed to timely and properly affirm or deny coverage, failed to extend defense and indemnity benefits under its policy owed to Missoula County thereby breaching its duties under its contracts. Defendant States also violated its obligations under the law of Montana which were also implied obligations or terms and conditions in the contracts of insurance.

11. As a result of its breach of its obligations to Missoula County, Defendant States is: a) estopped from asserting any contractual defenses, b) obligated to reimburse Missoula County for all of its defense fees and all costs it incurred, c) obligated to reimburse Missoula County for all payments made by it in resolution of the suits, d) obligated to pay prejudgment interest on all sums incurred in the defense and settlement of the suits; and e) obligated to reimburse Missoula County for its legal fees and all costs incurred in this action.

WHEREFORE, the Missoula County prays as follows:

1. For recovery of its defense fees and costs expended in the defense of the underlying action together with prejudgment and post judgment interest thereon until

paid;

2. For recovery of its settlement payments with respect to the underlying litigation together with prejudgment and post judgment interest thereon until paid;

3. For recovery of its attorney fees and all costs incurred in enforcing its rights under its contracts with Defendant incurred in this action; and

4. For such other and further relief as may be just and proper.

DATED this 10th day of September, 2020.

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